

**STATE OF INDIANA
BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF)	
)	
WILLIAM A. GEYER)	
d/b/a BILL'S GRILL)	PERMIT NO. RR71-21242
401 SOUTH MOTT)	
LAKEVILLE, INDIANA 46536)	
)	
Applicant)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

William Geyer, d/b/a Bill's Grill ("Applicant"), located at 401 S. Mott, Lakeville, Indiana 46536, permit number RR71-21242, is the applicant for a type 210-1 Alcohol and Tobacco Commission ("Commission" or "ATC") permit. The application was assigned to the St. Joseph County Local Alcoholic Beverage Board ("Local Board"). On October 27, 2004, the Local Board heard the application request and on that same day, voted 4-0 to grant the application. The Commission adopted the Local Board's recommendation on November 9, 2004. The remonstrators, John Birkey, Gail Snyder, and Burt J. Gates ("Remonstrators"), filed a timely Notice of Appeal and the matter was assigned to Commission Hearing Judge U-Jung Choe ("Hearing Judge"). The matter was set for hearing on August 3, 2005, and at that time, witnesses were sworn, evidence was heard, and matters were taken under advisement. The Hearing Judge, having reviewed the tape-recorded transcript of the Local Board hearing, the evidence submitted to the Commission during the appeal hearing, contents of the entire Commission file, and the evidence submitted after the appeal hearing, now tenders her Proposed Findings of Fact and Conclusions of Law for recommendation to the members of the Commission.

II. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
1. James Clay, Town Council, Town of Lakeville.
 2. William Geyer, Applicant.
 3. Viola Woods, attorney for the Town of Lakeville and for the Applicant.
- B. The following exhibits were introduced before the Local Board in favor of the Applicant:
1. Letter in support of issuance of permit to the Applicant from the President, Fred Holdeman, Town Council, Town of Lakeville, dated October 26, 2004.
- C. The following individuals appeared and/or testified before the Local Board against the Applicant:
1. John Birkey, Assistant Pastor, Lakeside Baptist Church.
 2. Burt Gates, resident of Lakeville.
 3. John Hamilton, Youth Pastor, Lakeside Baptist Church.
 4. Gail Snyder, AAA Tool & Die, Bremen, Indiana.
- D. The following exhibits were introduced before the Local Board against the Applicant:
1. Exhibits 1, 2, and 3: photographs of Mangus Drive and U.S. 31.
 2. Exhibit 4: photograph of Lakeside Baptist Activity Center for Youth.
 3. Exhibit 5 and 6: photographs of proposed permit location.
 4. Exhibit 7: photograph of Lakeside Baptist Church.
 5. Exhibit 8: photograph of proposed permit location.
 6. Exhibit 9: photograph of Lakeside Baptist Church.

III. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
1. William Geyer, Applicant.
 2. Viola Woods, attorney for the Applicant.
- B. The following exhibits were introduced and admitted before the Commission in favor of the Applicant:
1. Exhibit 1: map of proposed permit location.
 2. Exhibit 2: letter in support of William Geyer from Town Council, Town of Lakeville, signed by Fred Holdeman, President, James Halasz, Vice President, and James Clay, Council Member. Dated August 1, 2005.

C. The following exhibits were introduced and admitted by the Hearing Judge in favor of the Applicant after the appeal hearing pursuant to the August 3, 2005 Order.

1. Exhibit A: Memorandum Opposing Appeal.
2. Exhibit B-a: *Amicus Curiae* memorandum from the Lakeville Economic Development Commission, signed by President Richard Mangus, dated September 1, 2005.
3. Exhibit B-b: letter in support of the Applicant from Town of Lakeville, Town Council, dated August 1, 2005.
4. Exhibit B-c: affidavit of Chris Rowe, President, Union Township Advisory Board, supporting the issuance of permit to the Applicant. Dated September 1, 2005.
5. Exhibit B-d: affidavit of Loren Geyer, Trustee, Union Township, supporting the issuance of permit to the Applicant. Dated September 1, 2005.
6. Exhibit B-e: affidavit of Eloysa Bourdon, President, Lakeville Parks and Recreation Board, supporting the issuance of permit to the Applicant. Dated September 1, 2005.
7. Exhibit B-f: affidavit of Wayne Hummel, Town Marshall, Town of Lakeville, supporting the issuance of permit to the Applicant. Dated September 1, 2005.
8. Exhibit B-g: letter in support of the Applicant from Lakeville Business Owners Association, letter signed by President Denny Hardy. Not dated.
9. Exhibit C: photographs of proposed site and establishment.
10. Exhibit D: Notice of Appearance of Viola Woods, pursuant to the Hearing Judge's instruction on August 3, 2005.
11. Exhibit E: Findings of Fact and Conclusions of Law.

D. The following individuals testified before the Commission against the Applicant in this cause:

1. John Burkey, Assistant Pastor of the Lakeside Baptist Church.
2. Vito Rulli, Pastor of the Lakeside Baptist Church.

E. The following exhibits were introduced and admitted before the Commission against the Applicant in this cause:

1. Exhibit 1: signed petition opposing further availability of any kind of alcoholic beverage in the Lakeville area.
2. Exhibit 2: letter opposing issuance of alcoholic beverage permit at the proposed permit location from Kelley's Bait Shop, 650 S. Michigan, P.O. Box 251, Lakeville, Indiana, dated August 2, 2005.
3. Exhibit 3: letter opposing issuance of alcoholic beverage permit at the proposed permit location from K & H Satellite, 650 S. Michigan Street, Lakeville, Indiana, dated August 2, 2005.
4. Group Exhibit 4: photographs depicting proposed permit location, U.S. Highway 31, Lakeside Baptist Church, and Mangus Drive.

5. Exhibit 5: letter opposing issuance of alcoholic beverage permit at the proposed permit location from Jackie Walorski, State Representative, dated July 21, 2005.

F. The following exhibits were introduced and admitted by the Hearing Judge against the Applicant after the appeal hearing pursuant to the August 3, 2005 Order.

1. Exhibit A: alcohol-related driving statistics.
2. Exhibit B: videotape of proposed permit location, U.S. 31, and the Lakeside Baptist Church.
3. Exhibit C: letter from John Birkey, Assistant Pastor of Lakeside Baptist Church, opposing issuance of permit at issue. Dated September 2, 2005.
4. Exhibit D: letter from Vito Rulli, Senior Pastor from Lakeside Baptist Church, opposing issuance of permit at issue. Dated September 2, 2005.
5. Exhibit E: Lakeside Baptist Church, Statement Concerning Appeal of Liquor License Across From the Church.
6. Exhibit F: photograph of Mangus Drive and the Lakeside Baptist Church.
7. Exhibit G: photograph of ATC Public Notice of Application for Alcoholic Beverage Permit.
8. Exhibit H: aerial map of proposed permit location.
9. Exhibit I: *Liquor License Denied VFW on Western*, South Bend Tribune, August 25, 2005.
10. Exhibit J: *Indiana Won't Renew Glo Worm's Permit*, South Bend Tribune, August 18, 2005.
11. Exhibit K: *Fourth Fatal Crash In Four Days*, South Bend Tribune, August 2, 2005.
12. Exhibit L: *Police Say Alcohol a Factor in Train Fatality*, South Bend Tribune, August 9, 2005.
13. Exhibit M: *MADD Alcohol Marketers and the Insignificant Crash Victims*, Fall 1997.
14. Exhibit N: *\$39 Million Verdict Against Restaurant Upheld in Court*, South Bend Tribune, August 2, 2005.
15. Exhibit O: *Licensing a Law to Live By*, South Bend Tribune, No date.
16. Exhibit P: letter from Rosie Kline, resident of Lakeville, opposing issuance of permit at issue. No date.
17. Exhibit Q: letter from George L. Thompson, Lakeville Baptist Church member, opposing issuance of permit at issue. Dated August 1, 2005.
18. Exhibit R: letter from Risinger Transport Corporation, Dan C. Kepple, General Manager, opposing issuance of permit at issue. Accompanied by ten other Risinger employees' signatures. Dated August 1, 2005.
19. Exhibit S: letter from Dorothy Dickson, resident of Lakeville, opposing issuance of permit at issue. Dated August 29, 2005.
20. Exhibit T: letter from Diane Dickson, resident of Lakeville, opposing issuance of permit at issue. Dated September 1, 2005.

IV. FINDINGS OF FACT

1. The Applicant, William Geyer, d/b/a Bill's Grill ("Applicant"), located at 401 S. Mott, Lakeville, Indiana 46536, permit number RR71-21242, is the applicant for a type 210-1 ATC permit. (Local Board Hearing; ATC File).
2. Applicant filed with the Commission his application for a permit at this location, which was subsequently referred to the Local Board. (ATC File).
3. On or about October 27, 2004, the Local Board granted Applicant's permit application by 4-0 vote and found by substantial evidence that he should be entitled to the ATC permit. (ATC File; Local Board Hearing).
4. Credible and persuasive evidence supports the Local Board's decision. (Local Board Hearing).
5. On November 9, 2004, the Commission adopted the recommendation of the Local Board. (ATC File).
6. The Hearing Judge took judicial notice of the entire Commission file, including but not limited to, the Local Board tapes, the ATC file, and the application for the permit at issue. (ATC Hearing).
7. A wide spectrum of decision makers and members of the Lakeville area community support the moral character and repute of the Applicant. (Testimony of James Clay; *Amicus Curiae* memorandum from the Lakeville Economic Development Commission; Letters from Town of Lakeville, Town Council; Exhibit B-c to B-g; Testimony of Remonstrator Birkey).
8. Although the Remonstrators have voiced concern over the close proximity of the Lakeside Baptist Church to the proposed permit location, the record does not reveal that the Local Board had any concern over the distance between the church and the permit premises.

(Testimony of Birkey and Hamilton; Local Board Hearing). Moreover, Applicant presented ample evidence to demonstrate that the permit premises is not in a residential area or within two hundred feet of a church or school. (ATC File; Local Board Hearing; ATC Hearing).

9. The proposed permit premises is located on Mott Street. Mott Street is perpendicular to Mangus Drive and runs parallel to U.S. 31. (Remonstrator's Exhibits 1-9; Testimony of Geyer; Applicant's Exhibit 1). Remonstrators have expressed concern over the high speed at which people drive on U.S. 31 and the danger of an establishment that serves alcohol facing the highway. (Local Board Hearing; ATC Hearing; Testimony of Birkey and Hamilton; Remonstrator's Exhibit B to C). The record, however, does not reveal that the Local Board had any concern over this issue. (Local Board Hearing). Moreover, evidence indicates that the proposed permit location does have a separate ingress/egress way that is directly connected to Mott Street that runs perpendicular to Mangus Drive. (Remonstrator's Exhibits 1-9; Applicant's Exhibit 1). Neither the Local Board nor the Commission can deny a permit to an otherwise qualified applicant based on speculation that automobile accidents will likely occur in the future if alcoholic beverages are sold in a particular premises.

10. The Commission is statutorily charged to investigate a permit issuance in regard to its proposed geographical location; determine the need for such services at the proposed location; the desire of the neighborhood or community to receive such services; and the impact of the proposed permit location on the community and neighborhood and on area businesses. 905 IAC 1-27-4.

11. The proposed permit premises will primarily operate as a family restaurant. (ATC File; Local Board Hearing; ATC Hearing; Testimony of Geyer).

12. Although the Remonstrators have presented evidence to demonstrate that the community

does not desire an alcohol establishment (Local Board Hearing; ATC Hearing; Remonstrator's Exhibits A to T), it was not enough to overcome the substantial evidence as a whole presented by the Applicant indicating that the community does desire a family restaurant (Local Board Hearing; ATC Hearing; Applicant's Exhibits B-a to B-g; Testimony of James Clay; Testimony of Remonstrator Birkey) and that the community and neighborhood would benefit from the issuance of the permit. (ATC Hearing; Local Board Hearing). Thus, facts and substantial evidence favor supporting the granting of the permit. (ATC Hearing; Local Board Hearing; ATC File).

13. The Commission has the responsibility to regulate alcoholic beverages in a manner consistent with the desires of local communities.

14. The Commission may grant or refuse the permit application accordingly as it deems the public interest will be served best.

15. Any finding of fact may be considered a conclusion of law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Indiana Code § 7.1-1-2-2 and § 7.1-2-3-9.

2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.

3. The Commission is authorized to act upon proper application. *Id.*

4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).

5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission including a public hearing, and a review of the record and documents in the

Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).

6. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).

7. Applicant is of good moral character and of good repute in the community. Ind. Code § 7.1-2-3-7; 905 IAC 1-27-1.

8. Substantial evidence is the standard to be applied by the Commission in review of the record of proceedings. Substantial evidence requires something more than a scintilla, and less than a preponderance of evidence; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Indiana Alcoholic Beverage Comm. v. River Road Lounge*, 590 N.E. 2d 656 (Ind. App. 1992); *see also Roberts v. County of Allen*, 773 N.E.2d 850, 853 (Ind. App. 2002).

9. Based on the entire record, the Local Board's decision to grant the Applicant's permit is based on reasonable and sound evidentiary support, and is, therefore, supported by substantial evidence. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.* 615 N.E.2d 100, 104 (Ind. App. 1993).

10. The Commission is charged to uphold local board action on a permit application unless upon review that action runs contrary to the well-established provisions of Indiana Code 7.1 and 905 Indiana Administrative Code. The Commission's granting of the permit to the Applicant was based upon the recommendation of the Local Board, and was based upon substantial evidence.

11. The Commission is required to follow the recommendation of the local board when a majority of the members of the local board vote to grant the application for a permit. *Indiana Alcoholic Beverage Commission v. Harmon*, 379 N.E.2d 140, 147 (Ind. 1978); Ind. Code § 7.1-3-19-11.

12. The local board is charged to conduct an investigation of an alcohol permit application even before the Commission may act. Ind. Code § 7.1-3-19-3. The statute gives local boards discretion to consider any and all relevant sources of information. Ind. Code § 7.1-3-19-8.

Although the Commission may conduct its own investigation (Ind. Code § 7.1-3-19-10), it is also required to follow the local boards' recommendations unless they are arbitrary, capricious, contrary to a constitutional right, outside statutory jurisdiction, without observance of required procedures, or unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.

13. The Commission may investigate a permit issuance in regard to its geographical location; determine the need for such services at the proposed location; the desire of the neighborhood or community to receive such services; and the impact of the proposed permit location on the community and neighborhood and on area businesses. 905 IAC 1-27-4.

14. "Need" means whether the services are available at the location or in some close geographic proximity. 905 IAC 1-27-4(a).

15. "Desire" means whether individuals would purchase those products at that location, if they were available. 905 IAC 1-27-4(b).

16. A determination of whether there exists a need for the permit, a desire for the services, and to what degree of impact of such services on the neighborhood and businesses turns on the facts on each case. *Id.*

17. When remonstrators cite to the deleterious impact of alcohol in opposing a permit, it goes to the impact of such services on the neighborhood or community. 905 IAC 1-27-4(d).
18. Substantial evidence demonstrates that the community does need and desire the proposed services. Substantial evidence shows that the issuance of the permit is in the public's best interest. 905 IAC 1-27-4(a); Ind. Code § 7.1-3-19-10.
19. The Commission shall follow the Local Board unless upon review of that recommendation it finds that to follow that recommendation would be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to a constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; or (e) unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.
20. The Local Board's decision in granting the permit to the Applicant was not (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to a constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; or (e) unsupported by substantial evidence. *Id.*
21. Any conclusion of law may be considered a finding of fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the finding of the Indiana Alcohol & Tobacco Commission in granting the permit to the Applicant, William Geyer, d/b/a Bill's Grill, located at 401 S. Mott, Lakeville, Indiana 46536, permit number RR71-21242, was based on substantial evidence and must be sustained. It is further ordered, adjudged, and decreed that the evidence adduced at the ATC appeal hearing was not sufficient to overturn the

recommendation of the St. Joseph County Alcoholic Beverage Board or to issue a finding in favor of the Remonstrators and against the recommendation of the Local Board. The appeal of Remonstrators is hereby DENIED and the recommendation of the Local Board in this matter is UPHELD.

DATED: October 26, 2005

U-Jung Choe, Hearing Judge
Indiana Alcohol & Tobacco Commission